

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WISCONSIN

UNITED STATES OF AMERICA,

Plaintiff,

v.

Case No. 10-CR-262

AGUSTIN RODRIGUEZ-SANCHEZ,

Defendant.

ORDER ADOPTING MAGISTRATE JUDGE GORENCE'S RECOMMENDATION
(DOC. # 20) AND DENYING DEFENDANT'S MOTION TO SUPPRESS
DEFENDANT'S STATEMENT (DOC. # 8)

The defendant, Agustin Rodriguez-Sanchez, filed a motion to suppress his statements and evidence seized from the search of his home (Doc. # 8).¹ He contends that he was under the influence of drugs and alcohol when he gave his statement to law enforcement officers and that the search was conducted before the officers obtained a search warrant.

Magistrate Judge Patricia Gorence conducted an evidentiary hearing during which she heard testimony from the officers involved in the matter. Her Report and Recommendation, issued on March 4, 2011, found that the defendant's statement was voluntary and that there was no evidence that officers searched the defendant's home prior to the issuance of the search warrant. She further determined that the defendant told officers that he was not under the influence of drugs or alcohol when he made his statement. Moreover, none of the officers saw any indication that the defendant was under the influence of drugs or alcohol at that time. Additionally, Judge Gorence found that there was a search warrant for the defendant's home and that the record is completely devoid of

¹ The motion was titled as a motion to suppress the defendant's statement, but also asked the court to suppress any and all evidence obtained as a result of the search of his home, which he submits was executed before issuance of the search warrant.

evidence that any officer searched the residence before the search warrant was issued at 3:22 a.m. on November 15, 2010.

Defendant's counsel filed a letter on March 18, 2011, indicating that after careful consideration, defendant did not wish to file any objections to Judge Gorence's Recommendation. See Doc. # 22. Consequently, this matter is ready for disposition.

On dispositive matters and certain other matters enumerated in 28 U.S.C. § 636(b)(1)(A) and Fed. R. Crim. P. 59, including motions to suppress evidence, a magistrate judge may only propose findings and make recommendations. A district court must review *de novo* the recommendations of the magistrate judge to which a party timely objects. 28 U.S.C. § 636(b)(1)(C); Fed. R. Crim. P. 59(b)(2), (3). However, portions of a recommendation to which no party objects are reviewed for clear error. *Johnson v. Zema Sys. Corp.*, 170 F.3d 734, 739 (7th Cir. 1999). Thus, the *de novo* standard of review applies only to matters on which a party objects to a magistrate judge's recommendation (rather than an order) on the issues set forth in § 636(b)(1)(A) and Fed. R. Crim. P. 59(b)(1).

The court has reviewed Judge Gorence's Recommendation as to defendant Rodriguez-Sanchez's Motion to Suppress Defendant's Statement and finds no clear error. Therefore,

IT IS ORDERED that Magistrate Judge Gorence's Recommendation (Doc. # 20) is adopted, and for the reasons set forth by the magistrate judge, defendant Rodriguez-Sanchez's Motion to Suppress Defendant's Statement (Doc. # 8) is denied.

Dated at Milwaukee, Wisconsin, this 29th day of March, 2011.

BY THE COURT

/s/ C. N. Clevert, Jr.
C. N. CLEVERT, JR.
CHIEF U.S. DISTRICT JUDGE